

HOUSE BILL No. 1499

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-3; IC 7.1-5; IC 34-30-2-19.5.

Synopsis: Alcoholic beverage issues. Allows a brewer of a small brewery to sell and deliver beer to a consumer. Removes a provision that allows a brewer of a large brewery to sell and deliver beer to a consumer. Requires an applicant for a beer wholesaler's permit to describe all premises to be used as a warehouse. Provides that a warehouse of a beer wholesaler does not have to be located within the corporate limits of an incorporated city or town. Removes a provision that allows the alcohol and tobacco commission (ATC) to issue only one beer wholesaler's permit to an applicant. Prohibits a beer wholesaler from selling beer to a consumer other than an employee of the wholesaler. Allows a beer wholesaler to have an interest in another permit to sell at wholesale alcoholic beverages of any type. Makes it a Class A misdemeanor for a person to fail to return a keg to a wholesaler or dealer within 120 days after the date the keg of beer was purchased. Allows liquor retailers and liquor dealers to provide samples of flavored malt beverages and hard cider. Establishes requirements that a wine wholesaler must meet to resell wine purchased at an estate sale. Provides a wholesaler with immunity from civil liability for product liability or negligence regarding wine the wholesaler purchased at an estate auction and resold. Eliminates residency requirements for dealers. Establishes quotas for liquor wholesaler permits and wine wholesaler permits. Allows a beer wholesaler to have an interest in a wine or liquor wholesaler's permit. Allows the sale of alcoholic beverages on election day while the polls are open. Makes it a Class D felony for a wholesaler to sell a brand of alcoholic beverages that the permittee has not been authorized to sell by the brand's primary source of supply and allows an injured permittee to bring a civil action (Continued next page)

Effective: July 1, 2007.

Stutzman

January 23, 2007, read first time and referred to Committee on Public Policy.



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Digest Continued

against the wholesaler. Repeals a provision prohibiting the ATC from issuing a beer wholesaler's permit to a person who holds a wine wholesaler's permit and a liquor wholesaler's permit.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1499

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 7.1-3-2-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. The holder of a
3 brewer's permit or an out-of-state brewer holding either a primary
4 source of supply permit or an out-of-state brewer's permit may do the
5 following:
6 (1) Manufacture beer.
7 (2) Place beer in containers or bottles.
8 (3) Transport beer.
9 (4) Sell and deliver beer to a person holding a beer wholesaler's
10 permit issued under IC 7.1-3-3.
11 (5) If the brewer's brewery manufactures not more than twenty
12 thousand (20,000) barrels of beer in a calendar year, do the
13 following:
14 (A) Sell and deliver beer to a person holding a retailer or a
15 dealer permit under this title.



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- 1 (B) Be the proprietor of a restaurant.
 2 (C) Hold a beer retailer's permit, a wine retailer's permit, or a
 3 liquor retailer's permit for a restaurant established under clause
 4 (B).
 5 (D) Transfer beer directly from the brewery to the restaurant
 6 by means of:
 7 (i) bulk containers; or
 8 (ii) a continuous flow system.
 9 (E) Install a window between the brewery and an adjacent
 10 restaurant that allows the public and the permittee to view both
 11 premises.
 12 (F) Install a doorway or other opening between the brewery
 13 and an adjacent restaurant that provides the public and the
 14 permittee with access to both premises.
 15 (G) Sell the brewery's beer by the glass for consumption on the
 16 premises. Brewers permitted to sell beer by the glass under
 17 this clause must furnish the minimum food requirements
 18 prescribed by the commission.
 19 **(H) Sell and deliver beer to a consumer at the permit**
 20 **premises of the brewer or at the residence of the consumer.**
 21 **The delivery to a consumer shall be made only in a**
 22 **quantity at any one (1) time of not more than one-half (1/2)**
 23 **barrel, but the beer may be contained in bottles or other**
 24 **permissible containers.**
 25 (6) If the brewer's brewery manufactures more than twenty
 26 thousand (20,000) barrels of beer in a calendar year, own a
 27 portion of the corporate stock of another brewery that:
 28 (A) is located in the same county as the brewer's brewery;
 29 (B) manufactures less than twenty thousand (20,000) barrels
 30 of beer in a calendar year; and
 31 (C) is the proprietor of a restaurant that operates under
 32 subdivision (5).
 33 ~~(7) Sell and deliver beer to a consumer at the plant of the brewer~~
 34 ~~or at the residence of the consumer. The delivery to a consumer~~
 35 ~~shall be made only in a quantity at any one (1) time of not more~~
 36 ~~than one-half (1/2) barrel, but the beer may be contained in bottles~~
 37 ~~or other permissible containers.~~
 38 ~~(8) (7) Provide complimentary samples of beer that are:~~
 39 (A) produced by the brewer; and
 40 (B) offered to consumers for consumption on the brewer's
 41 premises.
 42 ~~(9) (8) Own a portion of the corporate stock of a sports~~

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corporation that:

(A) manages a minor league baseball stadium located in the same county as the brewer's brewery; and

(B) holds a beer retailer's permit, a wine retailer's permit, or a liquor retailer's permit for a restaurant located in that stadium.

~~(10)~~ (9) For beer described in IC 7.1-1-2-3(a)(4):

(A) may allow transportation to and consumption of the beer on the licensed premises; and

(B) may not sell, offer to sell, or allow sale of the beer on the licensed premises.

SECTION 2. IC 7.1-3-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. ~~(a) The~~ **All** premises to be used as a warehouse by an applicant shall be described in the application for the permit ~~The commission shall not issue a beer wholesaler's permit to an applicant for any other warehouse or premises than that described in the application. The commission shall issue only one (1) beer wholesaler's permit to an applicant; but and need not be located within the corporate limits of an incorporated city or town.~~ A permittee may be permitted to transfer his warehouse to another location within the county, upon application to, and approval of, the commission.

(b) ~~As used in this subsection, "immediate relative" means the father, the mother, a brother, a sister, a son, or a daughter of a wholesaler permittee. Notwithstanding subsection (a), the commission, upon the death or legally adjudged mental incapacitation of a wholesaler permittee, may allow the transfer of the wholesaler permit only to an immediate relative of the wholesaler permittee who concurrently holds a majority share in a valid wholesaler permit.~~

SECTION 3. IC 7.1-3-3-5, AS AMENDED BY P.L.224-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) The holder of a beer wholesaler's permit may purchase and import from the primary source of supply, possess, and sell at wholesale, beer and flavored malt beverages manufactured within or without this state.

(b) A beer wholesaler permittee may possess, transport, sell, and deliver beer to:

(1) another beer wholesaler authorized by the brewer to sell the brand purchased;

(2) ~~a consumer;~~ **an employee;** or

(3) a holder of a beer retailer's permit, beer dealer's permit, temporary beer permit, dining car permit, boat permit, airplane permit, or supplemental caterer's permit;

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located within this state. The sale, transportation, and delivery of beer shall be made only from inventory that has been located on the wholesaler's premises before the time of invoicing and delivery.

(c) ~~Delivery of beer to a consumer shall be made in barrels only with the exception of~~ The beer wholesaler's bona fide regular employees ~~who~~ may purchase beer from the wholesaler in:

(1) bottles, cans, or any other type of permissible containers in an amount not to exceed forty-eight (48) pints; **or**

(2) one (1) keg;

at any one (1) time.

(d) The importation, transportation, possession, sale, and delivery of beer shall be subject to the rules of the commission and subject to the same restrictions provided in this title for a person holding a brewer's permit.

(e) The holder of a beer wholesaler's permit may purchase, import, possess, transport, sell, and deliver any commodity listed in IC 7.1-3-10-5, unless prohibited by this title. However, a beer wholesaler may deliver flavored malt beverages only to the holder of one (1) of the following permits:

(1) A beer wholesaler or wine wholesaler permit, if the wholesaler is authorized by the primary source of supply to sell the brand of flavored malt beverage purchased.

(2) A wine retailer's permit, wine dealer's permit, temporary wine permit, dining car wine permit, boat permit, airplane permit, or supplemental caterer's permit.

(f) A beer wholesaler may:

(1) store beer for an out-of-state brewer described in IC 7.1-3-2-9 and deliver the stored beer to another beer wholesaler that the out-of-state brewer authorizes to sell the beer;

(2) perform all necessary accounting and auditing functions associated with the services described in subdivision (1); and

(3) receive a fee from an out-of-state brewer for the services described in subdivisions (1) through (2).

SECTION 4. IC 7.1-3-6.5-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. A person, including a permittee, who knowingly or intentionally:**

(1) purchases beer contained in a keg from a wholesaler or dealer permittee; and

(2) does not return the keg to the wholesaler or dealer permittee described in subdivision (1) within one hundred twenty (120) days after the date the beer was purchased;

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1 **commits a Class A misdemeanor.**

2 SECTION 5. IC 7.1-3-9-11 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) A liquor retailer
4 may allow customers to sample the following:

5 (1) Beer.

6 (2) Wines.

7 (3) Liquors.

8 (4) Liqueurs and cordials (as defined in 27 CFR 5.22(h)).

9 **(5) Flavored malt beverages.**

10 **(6) Hard cider.**

11 (b) Sampling is permitted only:

12 (1) on the liquor retailer's permit premises; and

13 (2) during the permittee's regular business hours.

14 (c) A liquor retailer may not charge for the samples provided to
15 customers.

16 (d) Sample size of wines may not exceed one (1) ounce.

17 (e) In addition to the other provisions of this section, a liquor retailer
18 who allows customers to sample liquors, liqueurs, or cordials shall
19 comply with all of the following:

20 (1) A liquor retailer may allow a customer to sample only a
21 combined total of two (2) liquor, liqueur, or cordial samples per
22 day.

23 (2) Sample size of liqueurs or cordials may not exceed one-half
24 (1/2) ounce.

25 (3) Sample size of liquors may not exceed four-tenths (0.4) ounce.

26 (f) A sample size of beer, **flavored malt beverages, or hard cider**
27 may not exceed six (6) ounces.

28 SECTION 6. IC 7.1-3-10-13 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. (a) A liquor dealer
30 permittee who is a proprietor of a package liquor store may allow
31 customers to sample the following:

32 (1) Beer.

33 (2) Wines.

34 (3) Liquors.

35 (4) Liqueurs and cordials (as defined in 27 CFR 5.22(h)).

36 **(5) Flavored malt beverages.**

37 **(6) Hard cider.**

38 (b) Sampling is permitted:

39 (1) only on the package liquor store permit premises; and

40 (2) only during the store's regular business hours.

41 (c) No charge may be made for the samples provided to the
42 customers.

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(d) Sample size of wines may not exceed one (1) ounce.

(e) In addition to the other provisions of this section, a proprietor who allows customers to sample liquors, liqueurs, or cordials shall comply with all of the following:

(1) A proprietor may allow a customer to sample not more than a combined total of two (2) liquor, liqueur, or cordial samples per day.

(2) Sample size of liqueurs or cordials may not exceed one-half (1/2) ounce.

(3) Sample size of liquors may not exceed four-tenths (0.4) ounce.

(f) Sample size of beer, **flavored malt beverages, or hard cider** may not exceed six (6) ounces.

SECTION 7. IC 7.1-3-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) The commission may issue a wine wholesaler's permit to sell wine, or wine and brandy, at wholesale to a person who:

(1) ~~notwithstanding IC 7.1-5-9-4,~~ holds a beer wholesaler's permit;

(2) holds a liquor wholesaler's permit; or

(3) does not hold an alcoholic beverage wholesaler's permit, but meets the qualifications to hold either a beer or a liquor wholesaler's permit.

(b) The holder of a wine wholesaler's permit under subsection (a)(1) or (a)(2):

(1) is considered the same as a person who holds a wine wholesaler's permit under subsection (a)(3) for purposes of conducting activities and operations under the wine wholesaler's permit; and

(2) may operate the beer or liquor wholesale business independently of the wine wholesale business.

SECTION 8. IC 7.1-3-13-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3.5. (a) A wine wholesaler may sell wine purchased from an estate sale only if the following requirements are met:**

(1) The primary source of the wine sold at auction:

(A) is authorized to sell wine in Indiana on the date the wine is resold by the wholesaler;

(B) is given notice of the purchase by the wine wholesaler; and

(C) authorizes the wine wholesaler to resell the wine purchased.

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(2) The seller of wine at auction is a bona fide estate of an Indiana decedent.

(3) Each wine bottle has a sticker affixed to it indicating that the wine was purchased from an estate.

(b) The notice given to the primary source under subsection (a)(1) must include the following information:

(1) The name of the seller.

(2) The amount of the product purchased and the sale price at auction.

(3) The vintage of the wine purchased.

(c) A wholesaler is not liable for product liability or negligence for wine that the wholesaler sells from an estate auction purchase.

SECTION 9. IC 7.1-3-21-3, AS AMENDED BY P.L.165-2006, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. The commission shall not issue:

(1) an alcoholic beverage retailer's ~~or dealer's~~ permit of any type; or

(2) a liquor wholesaler's permit;

to a person who has not been a continuous and bona fide resident of Indiana for five (5) years immediately preceding the date of the application for a permit.

SECTION 10. IC 7.1-3-21-4, AS AMENDED BY P.L.165-2006, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. The commission shall not issue:

(1) a liquor wholesaler's permit; or

(2) an alcoholic beverage retailer's ~~or dealer's~~ permit;

of any type to a partnership unless each member of the partnership possesses the same qualifications as those required of an individual applicant for that particular type of permit.

SECTION 11. IC 7.1-3-21-5, AS AMENDED BY P.L.165-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) The commission shall not issue:

(1) an alcoholic beverage retailer's ~~or dealer's~~ permit of any type; or

(2) a liquor wholesaler's permit;

to a corporation unless sixty percent (60%) of the outstanding common stock is owned by persons who have been continuous and bona fide residents of Indiana for five (5) years.

(b) The commission shall not issue a liquor wholesaler's permit to a corporation unless at least one (1) of the stockholders shall have been a resident, for at least one (1) year immediately prior to making application for the permit, of the county in which the licensed premises

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are to be situated.

(c) Each officer and stockholder of a corporation shall possess all other qualifications required of an individual applicant for that particular type of permit.

SECTION 12. IC 7.1-3-21-5.2, AS AMENDED BY P.L.165-2006, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5.2. (a) The commission shall not issue:

(1) an alcoholic beverage retailer's ~~or dealer's~~ permit of any type; or

(2) a liquor wholesaler's permit;

to a limited partnership unless at least sixty percent (60%) of the partnership interest is owned by persons who have been continuous and bona fide residents of Indiana for five (5) years.

(b) The commission shall not issue a liquor wholesaler's permit to a limited partnership unless for at least one (1) year immediately before making application for the permit, at least one (1) of the persons having a partnership interest has been a resident of the county in which the licensed premises are to be situated.

(c) Each general partner and limited partner of a limited partnership must possess all other qualifications required of an individual applicant for that particular type of permit.

SECTION 13. IC 7.1-3-21-5.4, AS AMENDED BY P.L.165-2006, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5.4. (a) The commission shall not issue:

(1) an alcoholic beverage retailer's ~~or dealer's~~ permit of any type; or

(2) a liquor wholesaler's permit;

to a limited liability company unless at least sixty percent (60%) of the membership interest is owned by persons who have been continuous and bona fide residents of Indiana for five (5) years.

(b) The commission shall not issue a liquor wholesaler's permit to a limited liability company unless for at least one (1) year immediately before making application for the permit, at least one (1) of the persons having a membership interest has been a resident of the county in which the licensed premises are to be situated.

(c) Each manager and member of a limited liability company must possess all other qualifications required of an individual applicant for that particular type of permit.

SECTION 14. IC 7.1-3-21-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) The provisions of sections 4, 5, 5.2, and 5.4 of this chapter concerning retail ~~and dealer~~ partnerships, corporations, limited partnerships, and limited liability

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companies shall not apply to the issuance of:

- (1) a dining car permit;
- (2) a boat permit;
- (3) a drug store permit;
- (4) a grocery store permit;
- (5) a hotel permit;
- (6) an airplane permit;
- (7) an excursion and adjacent landsite permit;
- (8) a horse track permit;
- (9) a satellite facility permit; or
- (10) a retail permit to an establishment:
 - (A) that is sufficiently served by adequate law enforcement at its permit location; and
 - (B) whose annual gross food sales at the permit location:
 - (i) exceed one hundred thousand dollars (\$100,000); or
 - (ii) in the case of a new application and as proved by the applicant to the local board and the commission, will exceed two hundred thousand dollars (\$200,000) by the end of the two (2) year period from the date of the issuance of the permit.

(b) The commission shall not issue a permit listed in subsection (a) to a foreign:

- (1) corporation;
- (2) limited partnership; or
- (3) limited liability company;

that is not duly qualified to do business in Indiana.

SECTION 15. IC 7.1-3-22-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.1. (a) Except as provided in subsection (b), the commission may issue only one (1) liquor wholesaler's permit in each county in Indiana.**

(b) The commission may issue additional liquor wholesaler's permits on the basis of one (1) additional permit for each thirty-five thousand (35,000) unit of population, or fraction thereof, in a county whose population exceeds thirty-five thousand (35,000).

(c) This section does not affect a permit issued or the right of renewal or successive renewals of a permit issued in a county in which the limitations under subsection (a) or (b) are exceeded, as of June 30, 2007.

SECTION 16. IC 7.1-3-22-2.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2007]: Sec. 2.2. (a) Except as provided in subsection (b), the commission may issue only one (1) wine wholesaler's permit in each county in Indiana.

(b) The commission may issue additional wine wholesaler's permits on the basis of one (1) additional permit for each thirty-five thousand (35,000) unit of population, or fraction thereof, in a county whose population exceeds thirty-five thousand (35,000).

(c) This section does not affect a permit issued or the right of renewal or successive renewals of a permit issued in a county in which the limitations under subsection (a) or (b) are exceeded, as of June 30, 2007.

SECTION 17. IC 7.1-5-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) This section applies to a brewer that manufactures more than twenty thousand (20,000) barrels of beer in a calendar year.

(b) It is unlawful for the holder of a brewer's ~~or beer wholesaler's~~ permit to have an interest in a liquor permit of any type under this title.

SECTION 18. IC 7.1-5-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. ~~Except as provided in IC 7.1-3-3-4,~~ An applicant for a beer wholesaler's permit shall have no interest in the following:

(1) A permit to manufacture or to sell at retail alcoholic beverages of any kind.

~~(2) Any other permit to wholesale alcoholic beverages.~~

~~(3)~~ (2) Through stock ownership or otherwise, a partnership, limited liability company, or corporation that holds

~~(A)~~ a permit to manufacture or to sell at retail alcoholic beverages of any kind. ~~or~~

~~(B)~~ any other permit to wholesale alcoholic beverages of any kind.

SECTION 19. IC 7.1-5-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Except as provided in subsection (d), it is unlawful to sell alcoholic beverages at the following times:

(1) At a time other than that made lawful by the provisions of IC 7.1-3-1-14.

(2) On Christmas Day and until 7:00 o'clock in the morning, prevailing local time, the following day.

~~(3) On primary election day, and general election day, from 3:00 o'clock in the morning, prevailing local time, until the voting polls are closed in the evening on these days.~~

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(4) During a special election under IC 3-10-8-9 (within the precincts where the special election is being conducted); from 3:00 o'clock in the morning until the voting polls are closed in the evening on these days:

(b) During the time when the sale of alcoholic beverages is unlawful, no alcoholic beverages shall be sold, dispensed, given away, or otherwise disposed of on the licensed premises, and the licensed premises shall remain closed to the extent that the nature of the business carried on the premises, as at a hotel or restaurant, permits.

(c) It is unlawful to sell alcoholic beverages on New Year's Day for off-premises consumption.

(d) It is lawful for the holder of a valid beer, wine, or liquor wholesaler's permit to sell to the holder of a valid retailer's or dealer's permit at any time.

SECTION 20. IC 7.1-5-10-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 23. (a) A wholesaler permittee who knowingly or intentionally sells a brand of alcoholic beverages that the wholesaler permittee has not been authorized to sell by the brand's primary source of supply commits a Class D felony.**

(b) A permittee who is injured as a result of a violation of this section has a private right of action to bring a civil action to recover compensatory damages against the wholesaler permittee who violates this section.

SECTION 21. IC 34-30-2-19.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 19.5. IC 7.1-3-13-3.5 (Concerning wine purchased at an estate sale and resold by a wine wholesaler).**

SECTION 22. IC 7.1-3-3-19 IS REPEALED [EFFECTIVE JULY 1, 2007].

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